

November 2, 1998

TO WHOM IT MAY CONCERN:

Please note that the attached draft **Deed of Conservation Easement** is a “work in progress” by Arizona State Parks staff and will be presented to the Arizona State Parks Board for consideration on November 19th at their next Board meeting. No agreement has been reached between Arizona State Parks and the Nature Conservancy and a number of the terms in the document still need to be negotiated.

We encourage you to read this document carefully and submit any comments by letter or come to the public meeting on November 17th. Comments will help Arizona State Parks staff in drafting the final wording of the Conservation Easement.

The Arizona State Parks Board is considering a proposal from the Nature Conservancy to purchase a combination of conservation easement rights over the bulk of the ranch and a smaller parcel in fee simple.

The San Rafael Ranch is a 22,000-acre tract of land located in the far southeastern section of Santa Cruz County. The entire area runs north from the Mexican border and along six miles of the Santa Cruz River. For more than 20 years, this property has been recognized as one of the highest priority sites identified by the Arizona State Parks Natural Areas Program of the Arizona Heritage Fund. If concluded, this purchase will be the largest property under a conservation easement in Arizona.

The Arizona State Parks staff will be taking public input on November 17th in Patagonia on the potential purchase of a portion of land and a conservation easement on the 34-square-mile San Rafael Ranch. The meeting will be held from 5:00-8:00 p.m. at Cady Hall at the Patagonia Library. (Take 82 south to Patagonia go East on 3rd Ave and two blocks to Dusquense and turn South. Cady Hall is half way down the street on the right.)

This conservation easement agreement is also available on the Internet on the Arizona State Parks homepage at <http://www.pr.state.az.us>

Thank you,

Ken Travous
Executive Director

THIS DEED OF CONSERVATION EASEMENT is made this ____ day of January, 1999, by [TO BE DETERMINED], having an address at____ ("Grantor"), in favor of THE STATE OF ARIZONA BY AND THROUGH THE ARIZONA STATE PARKS BOARD, having an address at____("Grantee").

RECITALS:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Santa Cruz County, Arizona, more particularly described on Exhibits A and B attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Grantor and Grantee acknowledge that the Property currently remains in a substantially undisturbed, natural state, has ecological, open space and historic values, and provides natural habitat for native plants and wildlife (the unique characteristic of the Property are defined in Paragraph 2 (c) herein and are referred to collectively as, the "Conservation Values");

WHEREAS, the Property has historically been operated primarily as a livestock ranching operation and Grantor is committed to management of that operation as a sustainable ranching operation which fosters abundant and diverse native flora and fauna, clean air, clean water and stable soils, providing for stable economic returns (the "Sustainable Grazing Practices");

WHEREAS, Grantor and Grantee agree that the healthy ecological condition of the Property is attributable to the historic use of the Property;

WHEREAS, Grantor and Grantee share the mutual goal of cooperation in an effort to foster private economic land uses that are compatible with the conservation of significant ecological values;

WHEREAS, Grantee recognizes the ecological benefits that a sustainable ranching operation provides to the native flora and fauna, clean air, clean water and sustainable soils;

WHEREAS, the Conservation Values and the Sustainable Grazing Practices of the Property are further documented in an inventory of relevant features of the Property, titled THE _____ EASEMENT DOCUMENTATION REPORT, as amended, dated_____and incorporated by this reference (the "Report"), which consists of reports, maps, photographs, and other evidence that the parties provide, or will provide, and presents an accurate representation of the condition of the Property currently;

WHEREAS, the Report is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Conservation Easement;

WHEREAS, both Grantor and Grantee acknowledge that the Report must be revised within the next eighteen (18) months to give an accurate inventory of the Conservation Values of the Property after the most recent growing season cycle;

WHEREAS, Grantor and Grantee believe that protection of the Property, the Conservation Values and the Sustainable Grazing Practices will preserve the ecological integrity of the grassland and riparian ecosystems of the San Rafael Valley;

WHEREAS, all of the Conservation Values are of great importance to Grantor and Grantee;

WHEREAS, Grantor, as the fee simple owner of the Property, owns the affirmative rights to identify, preserve and protect, in perpetuity, the Property's open space character, its significant natural and cultural features and the Conservation Values;

WHEREAS, Grantor desires and intends to transfer such rights to identify, preserve and protect, in perpetuity, the Property's open space character, its significant natural and cultural features and the Conservation Values, to Grantee;

WHEREAS, Grantee has recognized the importance of the preservation of natural areas using conservation easements by the enactment of A.R.S. Title 33, Chapter 2, Article 4;

WHEREAS, Grantee has enacted A.R.S. § 41-501, et. seq., to acquire interests in real property to protect natural areas;

WHEREAS, Grantor intends that the Conservation Values and the Sustainable Grazing Practices of the Property be preserved, enhanced and maintained by allowing only those land uses on the Property that do not significantly impair or interfere with the Conservation Values and the Sustainable Grazing Practices, including, those existing land uses described in the Report;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in exchange of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the law of the State of Arizona, and in particular A.R.S. § 33- 271, et. seq., the parties hereto agree as follows:

1. RECITALS. The parties hereto acknowledge and agree that the Recitals stated above are true and correct as of the date hereof.

2. DEFINITIONS. For the purposes of this Conservation Easement, the following terms shall have the following defined meanings:

(a) "Agricultural Uses" shall be defined as breeding, raising, pasturing and grazing domestic livestock and irrigating

crops in the Historic Fields;

(b) "Associated Improvements" shall mean such buildings, structures, improvements, living quarters, swimming pools as are customarily appurtenant to comparable single family ranch dwelling in the vicinity of the Property, including, but not limited to living quarters in connection with Agricultural Uses on the Property;

(c) "Commercial Feed Lot" shall mean a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and which is maintained for the purposes of engaging in the business of the reception and the feeding of livestock for hire;

(d) "Conservation Values" shall mean the aspects of the Property that remain substantially undisturbed, undeveloped, natural, open space, natural wildlife habitats, areas of biological diversity and/or ecological importance, short grass prairie, riparian woodland, cienega marsh and oak woodland on the Property;

(e) "Development Zones" shall mean _____;

(f) "Grantor" shall mean ____, and its successors and assigns permitted hereunder;

(g) "Grantee" shall mean the State of Arizona, by and through the State Parks Board, and its designated agents as may be authorized to undertake certain responsibilities herein;

(h) "Historic Fields" shall mean those agricultural fields shown on Exhibit ____ where there has been historic crop growing, cattle grazing and related irrigation;

(i) "Residence" shall mean a single family dwelling used primarily for residential purposes;

(j) "River Management Area" shall mean the portion of the Property, whether fenced or unfenced, consisting of approximately two thousand (2,000) acres that include the Santa Cruz River Channel and associated river habitat, which is more particularly shown on the map attached hereto as Exhibit ____ and incorporated herein by this reference;

(k) "Declining Ecological Condition" shall mean the documented evidence, using the Report as a baseline standard for monitoring, during two sequential monitoring periods of a decrease in ground cover or species diversity of native herbaceous perennial plants in grassland or a decrease of native river trees seedlings and saplings or decrease in ground cover of native perennial herbaceous plants in the River Management Area;

(l) "Ranch Management Plan" shall mean a written plan of

planned agricultural uses and activities on the Property developed in cooperation by Grantor and Grantee, which Ranch Management Plan shall: (i) be reviewed annually by Grantor and Grantee; (ii) prevent any use of the Property that will significantly impair or interfere with the Conservation Values and the Sustainable Grazing Practices of the Property; (iii) provide that, in the event of a Decline in Ecological Conditions is shown, the Grantor and Grantee shall modify The Ranch Management Plan, and implement changes in management, to correct the cause of the Decline of Ecological Condition; (iv) provide that within the River Management Area, no grazing shall occur between April 1 and October 31 of any year; (v) provide that, if a Decline in Ecological Condition is shown to occur in the River Management Area, the Grantee may, at its sole discretion, require immediate removal of livestock from the River Management Area until the cause of the Decline of Ecological Condition in the River Management Area has been corrected; (vi) provide that the Grantor may employ a consultant or consult with a third party to develop or update the Ranch Management Plan; and (vi) provide that Grantor may use the current Ranch Management Plan.

3. PURPOSE. The parties agree that it is the purpose of this Conservation Easement to: (i) assure that the Property will be preserved forever in its predominantly open, scenic, undeveloped and natural condition; (ii) prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property and the Property's natural resources and ecosystem; (iii) conserve habitat for wildlife; (iv) to protect rare and unique native plants and animals currently known or later identified; (v) conserve the diverse grassland and River vegetative communities; and (vi) promote the conservation purposes stated in A.R.S. § 33-271(2)(b).

4. GRANT OF EASEMENT AND DEVELOPMENT RIGHTS. In consideration of the sum of TEN DOLLARS AND 00/100 CENTS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Grantor hereby voluntarily grants, conveys, transfers and sells to Grantee a conservation easement, in perpetuity, the terms and conditions of which are stated herein (the "Conservation Easement"), over and across the Property, which Conservation Easement shall be appurtenant to the Property, shall run with the land and shall bind the Grantor and Grantee in perpetuity, subject to the terms and conditions contained herein. Further, as a part of this Conservation Easement, Grantor hereby grants to Grantee all development rights (except as specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it is now or hereafter may be bounded or described, or to any other property adjacent or other wise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

5. RIGHTS OF GRANTEE. Grantor hereby grants and conveys the following rights to Grantee, which rights shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee:

5.1 To identify, preserve, protect and monitor, in perpetuity, the Conservation Values of the Property;

5.2 To prevent Grantor or third persons from conducting any activity on or use of the Property that is prohibited or inconsistent with the Conservation Easement;

5.3 To enter upon the Property (but not building interiors of the Residences), for four (4) visits per year during the periods commencing July 1, and ending October 31, for a period of seven (7) days per visit, for the purpose of routine ecological monitoring, Ranch Management Plan monitoring, archeological survey, and otherwise enforcing monitoring the terms of this Conservation Easement, provided that, such entry shall be upon seven (7) days written notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Residence and the Property;

5.4 Upon thirty (30) days written notice to Grantor, and subject to Grantor's approval, which shall be in Grantor's sole discretion, to enter on the Property to engage in ecological and/or archeological studies, research and special projects provided that, Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Residence and the Property ;

5.5 To enter upon the River Management Area, for eight (8) visits per year, each visit for a maximum of two (2) days, to conduct controlled, guided, pedestrian only tours of the River Management Area, provided that: (i) such entry shall be upon thirty (30) days written notice to Grantor; (ii) Grantees shall assume full responsibility and liability for the activity of its personnel and guests; and (iii) such visits shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Residence and the Property;

5.5 To enter upon the Property at any time during the term of this Conservation Easement under emergency circumstances to prevent an imminent default of the terms of this Conservation Easement or, in Grantee's sole discretion, to prevent damage or destruction of the Conservation Values.

6. PERMITTED USES AND PRACTICES. Subject to the terms and conditions of this Conservation Easement, Grantor reserves to itself, and its successors, and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that: (i) are not expressly prohibited by this Conservation

Easement; (ii) are not inconsistent with the terms, conditions, intent and purpose of this Conservation Easement; and (iii) do not cause immediate or long terms damage, harm, injury, destruction or loss to the Property, the Conservation Values, the natural habitat, the wildlife and/or the natural plant life on the Property. Grantor intends to use the Property in accordance with the terms and conditions of the Conservation Easement for agricultural, educational, residential and recreational purposes. Without limiting the generality of the foregoing, and without infringing on the rights of Grantee to protect the Property, the Conservation Values and the Conservation Easement, the following rights are expressly reserved:

[NOTE TO ALL PARTIES: PARKS HAS NOT REVIEWED OR DISCUSSED THE FOLLOWING PROVISIONS]

6.1 The right to engage in domestic livestock grazing and Agricultural Uses consistent with the Sustainable Grazing Practices and the Ranch Management Plan;

6.2 The right to continue all reasonable manner of existing residential use and enjoyment of the buildings and grounds of the Development Zones, including but not limited to: (i) the maintenance, repair and restoration or replacement of existing fences; (ii) the maintenance of existing driveways and paths; (iii) the maintenance of existing utility lines; (iv) immediately around any permitted buildings on the Property, the right to cut, remove and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities and upkeep, consistent with the purposes of this Conservation Easement;

6.3 The right, as mutually agreed upon by the Grantor and Grantee regarding the locations, to construct the following residential/ranch improvements within the boundaries of the designated parcels:

[NOTE TO PARTIES: PARKS HAS NOT REVIEWED OR AGREED TO THE FOLLOWING PROVISIONS!]

Parcel A: A ten (10) acre area around the existing ranch house within which the Grantor may repair, remodel and rebuild existing residence, sheds and corrals, and the Grantor may construct additional corrals, sheds and or out buildings as reasonably necessary to facilitate the operation of the ranch or to utilize this site for residential purposes;

Parcel B: A five (5) acre area around the existing shipping corrals within which the Grantor may repair, remodel and rebuild existing corrals, loading ramps, etc. and the Grantor may construct additional corrals, ramps, etc. as reasonably necessary to facilitate the operation of the ranch;

Parcel C: A five (5) acre area around the existing hay barn within which the Grantor may repair, remodel and rebuild the existing hay

barn, and the Grantor may construct a maintenance shop.

Parcel D: One single family residence may be constructed within a twenty (20) acre building zone that may be located anywhere on the Property outside of the River Management Area and such that it is not visually intrusive on the historic ranch headquarters.

Parcels A-D: No residence or outbuilding may exceed 18 feet in height from natural ground; no barn may exceed 28 feet in height from natural ground. Non-reflective material shall be used for roofing all structures. Exterior siding, walls and roof of all buildings shall be earth tones.

6.4 The right, upon the receipt of written approval of Grantee, to clear new trails, construct new unpaved roads, utility lines, or culverts within the Property, if necessary, in connection with uses of the Property and only as specifically permitted by this Conservation Easement.

6.5 The right, upon the receipt of written approval of Grantee, to drill for water on the Property and to make available water wells and septic systems for any existing or permitted structures on the Property, provided such wells and pumping does not: (i) adversely affect wildlife habitat on the Property; (ii) significantly reduce perennial stream flow at springs or along the Santa Cruz River; (iii) produce no more than 35 gallons-per-minute; and (iv) breach any terms of the Conservation Easement or impair the Conservation Values.

6.6 NOTE: THIS HAS NOT BEEN DISCUSSED BY PARKS STAFF
The right to conduct educational and non-profit activities provided that they are consistent with this Conservation Easement.

6.7 The right, on any part of the Property excluding the River Management Area, to cut dying, dead and downed trees for firewood for domestic use only, provided such activity is consistent with the Conservation Easement and does not impair the Conservation Values.

6.8 The right to construct, maintain and repair fences and such other structures as are necessary in connection with the current or future uses of the Property permitted herein, provided that, any fences constructed or reconstructed shall allow for the safe passage of wildlife, including pronghorn antelope.

6.9 Hunting by Grantor or permittee of the Grantor, provided that: (i) any hunting is consistent with the sport hunting regulations of the State of Arizona; and (ii) any hunting does not violate the terms of the Conservation Easement and is consistent with the Conservation Values.

6.10 The right, at a location selected with the mutual agreement of Grantor and Grantee, to construct and maintain a traditional ranch dump site for non-hazardous waste generated on

the ranch provided that any such site operated in accordance with all local State and Federal Environmental Laws, rules, regulations, ordinances and procedures.

7. PROHIBITED USES AND PRACTICES. Grantor expressly agrees, warrants, represents, promises, covenants, contracts and states that the following uses and practices, though not an exhaustive or complete list, are specifically prohibited under the terms of the Conservation Easement and are, per se, defaults under the terms of the Conservation Easement:

7.1 Any actual, implied, attempted, de facto, proposed or planned partition, division, subdivision, lot split or sectioning of any portion of the Property;

7.2 Any actual, implied, attempted, de facto, proposed or planned severance, conveyance, sale, transfer, or export of any ground water, surface water, river water or any actual or implied water right, from the Property.

7.3 Any actual, implied, attempted, de facto, proposed or planned exploration for or extraction of oil, gas, hydrocarbons, sand, gravel, rock, minerals, and geothermal energies and pressures on or below the surface of the Property, except that sand, gravel and rock may be extracted for use on the Property that is necessary, reasonable and incidental to the permitted uses.

7.4 Any actual, implied, attempted, de facto, proposed or planned stocking of non-native fish or wildlife or transfer of fish, amphibians or other organisms to or from catchments, tanks, springs or creeks.

7.5 Any actual, implied, attempted, de facto, proposed or planned construction or placing of any improvement, buildings or structure except as expressly permitted under this Conservation Easement.

7.6 Any actual, implied, attempted, de facto, proposed or planned commercial logging.

7.7 Any actual, implied, attempted, de facto, proposed or planned collecting of natural vegetation for commercial purposes, except that Grantor shall be permitted to collect natural vegetation for commercial purposes upon written notice to Grantee and further provided that any commercial collection does not result in a Declining Ecological Condition, as defined herein.

7.8 Any actual, implied, attempted, de facto, proposed or planned activity which requires excessive use of water, such as irrigated crops or a golf course, except those water uses permitted under the Ranch Management Plan and the Conservation Easement.

7.9 Any actual, implied, attempted, de facto, proposed or planned planting of non-native vegetation, except for such uses that have historically been part of the ranching operation on the Property.

7.10 Any actual, implied, attempted, de facto, proposed or planned underground storage tanks for petroleum or other polluting substances.

7.11 Any actual, implied, attempted, de facto, proposed or planned storage or use of biocides or chemical fertilizers, except for those permitted under the Ranch Management Plan and the Conservation Easement.

7.12 Any actual, implied, attempted, de facto, proposed or planned: (i) feeder pig operations, slaughtering, hog finishing operations, cattle feed lot operations, Commercial Feed Lot; (ii) commercial raising of poultry in confined spaces; (iii) other similar operations whereby livestock, poultry, or other animals are raised in an unreasonable continuous confined or controlled environment; and (iv) cattle feeding operation which is not permissible under the terms of the Ranch Management Plan; provided that, nothing herein shall prevent Grantor from seasonally containing livestock into an area for feeding or the leasing of pasture for the grazing of livestock by others, subject to this Conservation Easement;

7.13 Any actual, implied, attempted, de facto, proposed or planned mobile homes, travel trailers, tent trailers, self-propelled recreational vehicles and like structures or vehicles located or used on the Property, except for vehicular campers owned by Grantor or guests may be parked on the Property to accommodate reasonable visitation;

7.14 Any actual, implied, attempted, de facto, proposed or planned (i) dumping of trash or other garbage on the Property, excluding the ranch dump permissible under Paragraph 6.10 ; or (ii) keeping of junked or wrecked vehicles, junked farm equipment, or similar items on the Property.

7.15 Any actual, implied, attempted, de facto, proposed or planned installation of above ground utilities (i.e. telephone, electric, cable TV, etc.), provided, however, Grantor shall be permitted to install reasonably necessary below ground utilities for the Residence and other Associated Improvements upon the written approval of Grantee, which shall not be unreasonably withheld.

7.16 Any actual, implied, attempted, de facto, proposed or planned paving of roads using asphalt or concrete.

7.17 Any actual, implied, attempted, de facto, proposed or planned diversion or pumping water from any perennial spring.

7.17 Any actual, implied, attempted, de facto, proposed or planned modification of the topography of the Property through the placement thereon of soil, land fill, dredging spoils, or other material.

8. APPROVAL BY GRANTEE. Grantor agrees in this Conservation Easement to obtain from Grantee prior written approval prior to undertaking certain permitted activities under the terms of this Conservation Easement more particularly stated in this Conservation Easement.

8.1 Whenever written approval of the Grantee is required under the terms of this Conservation Easement, Grantor shall notify Grantee in writing at least 60 days prior to the date Grantor intends to undertake the proposed activity. The notice shall describe the nature, scope, design, location and timetable of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement.

8.2 Grantee agrees to timely review the terms of request and in writing to Grantor either: (i) grant it's approval to the requested activity; (ii) withhold its approval to the requested activity; or (iii) request further specific information to make an informed decision.

8.3 In the event Grantee refuses to approve a proposed activity in writing, such writing shall state with reasonable specificity the reasons for withholding of concurrence, and the conditions, if any, on which concurrence might otherwise be provided.

8.6 Should Grantee fail to deliver its written response to Grantor's notice within: (i) sixty (60) days of receipt of Grantor's notice; or (ii) sixty (60) days of receipt by Grantee of Grantor's additional adequate information to evaluate the proposed activity, whichever is later, the proposed activity shall be deemed to be approved.

8.7 Grantor and Grantee agree that, in the event either party requests the other's written approval for any activity permitted under this Conservation Easement, Grantor and Grantee shall not unreasonably withhold approval.

9. DEFAULT AND REMEDIES.

9.1 If a dispute arises between the parties with respect to this Conservation Easement, Grantor and Grantee agree to use non-binding arbitration to attempt to resolve the dispute. Grantor agrees not to proceed with any proposed use or activity pending resolution of the dispute. The arbitrator shall be mutually approved. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

Nothing herein shall be interpreted to prevent resort to judicial proceedings for injunctive relief or otherwise to prevent imminent harm to the Conservation Values, to enjoin a violation pursuant to paragraph 9.2, or to enforce an arbitration decision, all according to the laws of the State of Arizona.

9.2 If Grantee determines that Grantor is in default of the terms of the Conservation Easement or that a default is threatened, Grantee shall give written notice to Grantor of such default and demand corrective action sufficient to cure the default and, where the default involves injury to the Property resulting from any activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the default within thirty (30) days after receipt of such notice, or under circumstances where the default cannot reasonably be cured with a thirty (30) day period, fails to begin curing such default within the thirty (30) day period, or fails to continue diligently to cure such default until finally cured, then the Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the default by temporary or permanent injunction, to recover any damages to which it may be entitled for default of the terms of this Conservation Easement or injury to any protected uses or Conservation Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If upon receipt of notice from the Grantee the Grantor fails to cease the activity which caused the default, the Grantee may bring immediate action at law to enjoin the default by temporary or permanent injunction.

9.3 Enforcement of the terms of this Conservation Easement shall be at the discretion of each party, and any forbearance by a party to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any such party's rights under this Conservation Easement. No delay or omission by a party in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

9.4 Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers, fire, flood, storm, drought, pests, earth movement, and major vegetative disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass or any other violation of the terms of this Conservation Easement.

9.5 In connection with any action to enforce the terms of this Conservation Easement, the prevailing party shall be entitled to award of attorneys' fees in accordance with Arizona law. All reasonable costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantors.

9.6 The terms of this Conservation Easement shall not be enforced by any person who is not a party to this agreement. The parties to the agreement do not intend to cause or allow any person to claim to be a third party beneficiary who has any right to enforce or interpret any terms of this agreement.

9.7 To the extent applicable, the parties agree to make use of mandatory arbitration pursuant to A.R.S. § 12-133.

10. COSTS, INSURANCE, ENVIRONMENTAL, TAXES. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

10.1 Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), and shall furnish Grantee with satisfactory evidence of payment upon request.

10.2 Grantors, at its expense, shall, at all times during the term of this Conservation Easement, maintain in full force a policy or policies of comprehensive general liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Arizona, each policy to be written on an occurrence basis, which shall insure Grantor and Grantee against liability for injury to persons, property and death of any person occurring in, on or about the Property, or arising out of Grantor's maintenance, use or occupancy of the Property. All general liability and personal property damage policies shall contain a provision that Grantor, shall be named as an additional insured and shall permit recovery for any loss occurred by reason of the negligence of Grantor or its agents, employees, sublessee or servants. All policies shall have a combined value of not less than TEN MILLION DOLLARS (\$10,000,000). Within ten (10) days of issuance of any new policy, commitment or renewal, a certificate of such policy, renewal or commitment shall be delivered to Grantee. Any failure

of Grantor to maintain the insurance policies under this Conservation Easement or failure to deliver to Grantee a copy of the policy, commitment or renewal shall be deemed a default under this Conservation Easement.

10.3 If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the releases was caused by the Grantee, in which case Grantee shall be responsible therefor.

10.4 Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

10.5 Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its Governor, Representatives, Senators, members, directors, officers, employees, attorneys, agents, and contractors and the heirs, personal representatives, successors, and assigns each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, (excluding any liability directly attributable to the negligence of one or more of the Indemnified Parties); (ii) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; and (iii) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise threatening to human health or the environment (excluding any liability directly attributable to one or more the Indemnified Parties).

11. CONDEMNATION. If all or any part of the Property

taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred shall be paid out of the amount recovered.

12. SUBSEQUENT TRANSFERS. Prior to any transfer, sale, grant, conveyance, gift, deed, divestiture, lease, hypothecation, quitclaim, mortgage or other assignment of any or all of its interest in the Property (collectively, "transfer"), Grantor shall provide written notice of the transfer to Grantee at least thirty (30) days before the transfer. Such notice shall contain such reasonable information for Grantee to conduct its obligations and activities with the entity that is the subject of the transfer. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor conducts a transfer, including, without limitation, a leasehold interest.

13. NOTICE. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and delivered by first class mail, postage pre-paid, certified mail, return receipt requested, addressed as follows:
To Grantors:

To Grantee:

or to such other address as either party from time to time shall designate by written notice to the other.

14. RECORDATION. Grantee shall record this instrument in timely fashion in the official records of Santa Cruz County, Arizona, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

15. GENERAL PROVISIONS.

15.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Arizona.

15.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of A.R.S. § 41-501; 33-271, et. seq., Title 33, Chapter 2, Article 4. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the

purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.3 Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

15.5 Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Conservation Easement. Any such amendment shall be consistent with the purpose of this Conservation Easement, shall not affect its perpetual duration, and shall not permit any impairment of the significant Conservation Values of the Property. Any such amendment shall be filed in the Registry of Deeds of Santa Cruz County, Arizona, after all required signatures have been affixed thereto. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

15.6 Extinguishment. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Conservation Easement, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of paragraph 8.3, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes

15.7 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

15.8 **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties, hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

15.9 **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.10 **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

15.11 **Cancellation.** This Conservation Easement is subject to cancellation per A.R.S. § 38-511.

15.12 **No Subordination.** Upon recordation in the records of the Santa Cruz County Recorder, this Conservation Easement shall be deemed superior to all after acquired property interests in the Property. Grantee shall have no obligation to subordinate its rights and interests in this Conservation Easement to any party.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

Grantors _____

Grantee _____

by _____

its _____

{NOTARY BLOCKS}